PRECEDENTS FOR PURIFYING CONGRESS

By CLARKE F. HUNN

STATEMENTS made in Senator La Follette's St. Paul speech in September have raised not only the Minnesota Commission on Public Safety to action, but the Senate itself as well. A committee, headed by Senator Pomerene, of Ohio, has been appointed and has been investigating those utterances, termed by various authorities "treasonable," "seditious," "pro-Prussian," "anti-American," "shadow-Hun," and, at best, "misinformed" and "in poor taste." Petitions have been addressed to the Senate for the expulsion of Senator La Follette from that august body, urging that the Senate "purify" itself of such "traitorous sentiment." Senators themselves, both preceding and following the Wisconsin member's speech in his defense on the last day of the session, have urged in impassioned tones his expulsion. But the purification of Congress by the expulsion of members is not the light matter that some people seem to regard it. It is interesting, therefore, to consider what the precedents are for expulsion or censure of members of Congress upon the accusation of traitorous or seditious utterances. The following is a brief summary of the leading instances, as revealed by such authorities as the "Annals," "Journal," "Globe" and "Record" of both Houses, and as they are summarized in Hind's "Precedents."

By far the largest crop of these purifications is yielded by the events preceding and during the Civil War. On July 10, 1861, for example, ten Senators, two from Virginia, two from North Carolina, one from South Carolina, one from Tennessee, two from Arkansas, and two from Texas, were expelled because they had "failed to appear in their seats in the Senate and to aid the Government in this important crisis, and it is apparent to the Senate that they are engaged in said conspiracy (Secession) for the destruction of the Union," and, furthermore, that, with "full knowledge of said conspiracy, they have failed to advise the Government of its program or aid in its suppression." Needless to say, nothing that the one-time "Fighting Bob" is so far reported to have done is comparable to the offenses of these Senators. The same is true of instances such as that of the expulsion of Representative John B. Clark, of Missouri, three days later, because he had "taken up arms against the Government of the United States," and of Senator Breckinridge, of Kentucky, and Congressmen Reid, of Missouri; Burnett, of Kentucky, and Dunn, of Indiana, on practically identical charges, in December of the same year. In dismissing Waldo P. Johnson, of Missouri, in December, the Senate sought purification from the taint of one who "being in sympathy with and participation in the rebellion against the Government of the United States, has been guilty of conduct incompatible with his duties and station." Only by straining good judgment to the breaking point could the La Follette utterances earn their author this qualification. The same is true in the case of Trusten Polk, of Missouri, whose expulsion on a resolution introduced in the Senate on October 18, 1861, terming him "a traitor," was the penalty for direct statements that "dissolution is now a fact" and the hearty commendation of the Secessionist Governor Jackson, of Missouri. Another evidence of impurity too extreme for Congressional tolerance was that of Jesse D. Bright, who was expelled from the Senate in October, 1861, for having written a letter to President Jefferson Davis, of the Confederacy, recommending to him one Thomas B. Lincoln, the inventor of a new fire-arm. This case in no way parallels the present one, but it is of interest to note for present consideration the remarks on that occasion of Senator Garrett Davis, of Kentucky. This Senator, who two years later was himself to be considered for expulsion, declared:

> Whenever a member of this House forms an opinion, and his official character and acts carries out that opinion, positively or negatively, in such a manner as to render him an unfit and unsafe member of the Senate, he becomes a proper subject of removal from that body.

He further declared that opposition to the conduct of the Administration was sufficient reason for expulsion. How seriously such a statement is taken into consideration in establishing the precedents of Congress is doubtful, however. Two years later Garrett Davis's own statement that "the people of the North ought to revolt against their war leaders and take this great matter into their own hands," which surely sounds like "an unsafe opinion" and opposition to the Government, was *not* considered sufficient cause for expulsion, and the resolution to that effect was withdrawn upon Davis's mere assurance that he had not intended to incite insurrection by these words.

Expulsion prior to 1861 was a rare affair, save where charges against the personal honesty of the member were brought. The only one approaching the present problem in similarity is that of Senator Blount, of Tennessee, who in July, 1797, was expelled on the definite charge of laying plans for a co-operation between the Southern Indians and British agents that would obviously be inimical to the interest of the United States and Spain.

Far more interesting testimony is to be found in the cases of members whose expulsion was proposed but not carried out, or in which censure was preferred to expulsion. These range from the remarkable case of that born trouble-maker, John Quincy Adams, and his petition presented in the House, in 1842, for the dissolution of the Union, to that of the comparatively mild case of Benjamin G. Harris, Congressman from Maryland, whose "seditious utterances" were: "The South has asked you to let them live in peace. I hope you will never subjugate them."

What would happen today in Congress were some

ill-inspired member to urge the dissolution of the Union is impossible to say. The furor created by Adams's petition is still echoed in the ancient pages of the "Globe" for that session, in which the reporter apologetically wrote that So-and-so "apparently said," and another "was understood to say" this or that by way of heated rejoinder. From amidst the mêlée still thunders the outcry of one incensed member: *"Is it not in order to burn the petition in the presence of the House?"* Yet, all this simmered down eventually to official censure of the unruly Massachusetts member. In the case of Congressman Harris, in 1864, the text of the original resolution for his expulsion held his words to be "manifestly tending and designed to encourage the existing rebellion and the public enemies of this nation," a charge that, with only slight alteration, would aptly state the opinion of many people concerning Senator La Follette's statement; but after lengthy debate this motion was amended to provide only for severe censure, and the nation's honor was apparently satisfied thereby.

None have gone quite so far as formally to accuse the present Senator from Wisconsin of "giving aid, countenance and encouragement to the enemies of the United States," yet when Congressman Long, of Ohio, was so accused, in 1864, the resolution for expulsion was defeated, and he earned only censure for his statements in favor of recognizing the independence and nationality of the Confederacy. Even John Smith, Senator from Ohio in 1807, was not expelled, although it was fairly proved that he was implicated in the Aaron Burr scandal. In this case, however, it is interesting to note the argument for his dismissal that was brought forward by that same John Quincy Adams whose later caprice in the House has been reported above. Adams advanced four main points in favor of the Senate's action on this case. These were, first, that above all it was necessary to maintain the purity of the Senate; second, that the Constitution provided for no recall of a representative of the people who failed adequately to represent them; third, that therefore Congress must act, not only for its own sake, but also in behalf of the people, and, fourth, that precedent established indubitably its right to do so. It is possibly upon some such argument as this that indignant Wisconsin citizens may seek to swerve the Senate's action upon its committee's report when it is presented in December.

Three other cases in which censure was preferred to expulsion are particularly interesting to consider, for in each case the complaints were based upon conduct not remotely similar to the actions of Senator La Follette since the outbreak of war. These are the arraignments, respectively, of Congressman Matthew Lyon, of Vermont, in 1799; Congressman Joshua B. Giddings, of Ohio, in 1842, and Senator Lazarus W. Powell, of Kentucky, in 1862. Mr. Lyon's transgression lay in the writing, in form of personal letters, of the most bitter arraignments of President Adams, as a pompous potentate with tyrannical tendencies, and of Congress as an unrepresentative and more or less corrupt body. An attempt was made in his behalf to distinguish between statements of opinion based on known facts and statement of alleged fact in the form of opinion, Representatives Nichols and Gallatin holding that the letters under discussion deserved only the former characterization, and that, since that was so, "If this resolution be adopted, every member who shall write anything which is contrary to the opinion of the majority of this House, whether what he writes be founded in truth or not, will be liable to be expelled in order to purify the House." This argument seems to have had weight with more than a small minority, for the vote of 49 to 45 was not sufficient for Lyon's expulsion and the House contented itself with censure.

Still nearer the mark is the case of Joshua Giddings, for his offense lay in presenting resolutions "of an incendiary character" at a time when negotiations "of the most delicate nature" were pending with Great Britain. The charge was, that is to say, one of misrepresenting the purposes of the Government and its people at a time when such misrepresentation could have a detrimental effect upon the free action of the Government. For this incendiarism, it is true, Giddings was severely censured, but expulsion was apparently not considered necessary for Congressional purification.

The third case, that of Powell, is even more nearly parallel to the present one, for Powell, himself guilty of no direct affront against the Government, identified himself with bodies in his own State which were engaged in preserving a neutrality in the disagreement between the North and South that is not greatly dissimilar from the attempt of certain pacifist bodies today to hold themselves aloof from the war. These bodies denounced the action of the North and refused to follow the South, yet declared that efforts on the part of either to coerce the State of Kentucky to take its side or to encroach upon Kentucky territory would be met by armed resistance. This may have been a more serious offense than that of our obstructionist pacifists, but it is at least analogous. Powell was cleared of guilt by the fact that, when Kentucky did finally join the Union, he came to Congress and performed his duties there in exemplary manner.

In connection with this last case it will be of interest to see whether the opinion of the present Senatorial Committee will to any degree approximate the opinion of Senator Trumbull, of Illinois, who, as Chairman of the Judiciary Committee, reported unfavorably upon the dismissal of Powell. He said, in part:

"His opinions are not my opinions, but he is entitled to his own opinions, and no man is to be expelled from this body because he disagrees with others in opinion."